

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROVISION OF)	
STANDARD OFFER SUPPLY TO RETAIL)	
CONSUMERS IN THE SERVICE TERRITORY)	PSC DOCKET NO. 04-391
OF DELMARVA POWER & LIGHT COMPANY)	
AFTER MAY 1, 2006)	
(OPENED OCTOBER 19, 2004))	

ORDER NO. 6943

This 20th day of June, A.D., 2006, the Commission determines and Orders the following:

1. In a series of earlier Orders in this docket, the Commission managed how Standard Offer Supply ("SOS") services would be provided to retail consumers within the electric distribution service territory of Delmarva Power & Light Company ("DP&L"). The Commission chose DP&L as the SOS supplier¹ and endorsed a "market-based" regime as the means for DP&L to acquire the necessary wholesale supply to meet its SOS load.² In particular, for "fixed price" retail SOS services, the procurement method was to be a competitive-bid, Request for Proposal ("RFP") process that would result in multiple requirements' contracts between DP&L and one or more wholesale suppliers.³ In December, 2005 and January, 2006, DP&L utilized this RFP process to procure supply for its post-May, 2006 fixed-price SOS services. The

¹PSC Findings, Opinion, and Order No. 6598 (Mar. 22, 2205).

²PSC Findings, Opinion, and Order No. 6746 (Oct. 11, 2005) ("Order 6746"). In that Order, the Commission also adopted a formula to set retail SOS rates based on the sum of the multi-element "reasonable allowance for retail margin" plus the incurred wholesale energy and capacity costs.

³Id.

process culminated in supply contracts with six successful bidders.⁴ A significant number of those contracts are now due to expire on June 1, 2007.⁵ All of these prior Orders were premised on the dictates of the Electric Utility Restructuring Act of 1999, 26 Del. C. ch. 10 (prior to amendments effective April 6, 2006).

2. The "Electric Utility Retail Consumer Act of 2006"⁶ has changed things. The RCA, by statutory directive, makes DP&L the SOS supplier in its electric distribution service territory. But maybe more significantly, it imposes an "Integrated Resource Planning" ("IRP") regime on how DP&L develops, produces, or acquires electric supply to meet its SOS load.⁷ And this IRP regime comes with Commission involvement and oversight. The Commission must endorse DP&L's choices about how it will acquire supply to meet its SOS load.⁸ Moreover, the Commission is charged with reviewing "all reasonable

⁴PSC Order No. 6881 (Mar. 28, 2006) (reviewing initial RFP process).

⁵All the contracts to provide supply for non-residential SOS load will lapse in June, 2007. On the residential SOS side, the contracts for supply have staggered lengths. Some (for one-third of that load) run until June, 2007. Others (for a second one-third of load) continue to June, 2008. The final ones (for the last one-third of load) last until June, 2009.

⁶See 75 Del. Laws ch. 242 (Apr. 6, 2006) ("Retail Consumer Act" or "RCA").

⁷See 26 Del. C. §§ 1002(a)(4) (as added by RCA § 3); 1007(c)(1) (as added by RCA § 6).

⁸See 26 Del. C. §§ 1007(b), (c) (as added by RCA § 63). In order to pursue a particular means for supply, DP&L must have that choice approved, as either part of a Commission-approved IRP plan, or in response to a separate application by the utility.

incurred costs" of the contracts, facilities, or programs that DP&L will utilize to meet its supply requirements for SOS load.⁹

3. At the same time, the RCA imposes some apparently hard rules about some aspects of DP&L's SOS load procurement choices. "At least thirty percent of the 'resource mix'" must consist of supply "purchases made through the regional wholesale market via a bid procurement or auction process held by DP&L."¹⁰ And the Commission is to oversee that process "subject to the procurement process approved in [this docket] as may be modified by future Commission action."¹¹

4. As noted earlier, many of DP&L's present SOS load contracts run only through May, 2007. The Commission suspects that DP&L will use the RFP bid process to procure some portion of supply for its post-May, 2007 SOS load.¹² Consequently, the Commission now re-invigorates this docket in order to consider whether - and what - changes need, or should, be made to the RFP procurement process adopted in Order 6746. The Commission understands Staff has some modifications to be considered. The Commission seeks the views of others about what changes to the Order 6746 RFP process might now be necessary, or advantageous. For example, on the legal side, do those provisions added by the RCA that require Commission approval of

⁹See 26 Del. C. §§ 1006(a)(2) (as added by RCA § 5); 1007(b) (as added by RCA § 6).

¹⁰See 26 Del. C. § 1007(c)(1) (as added by RCA § 6) (emphasis added).

¹¹Id.

¹²DP&L is not required to file its initial IRP Plan, outlining its 10-year supply plan, until December 1, 2006. The Commission cannot wait until then to begin any review of the Docket No. 04-391 procurement procedures.

procurement contracts and Commission review of procurement costs call for reworking how the Commission supervises the bid process and the standards for deciding whether to "approve" the eventual contracts with successful bidders? Similarly, should the Commission alter the length of the procurement contracts set by Order 6746 to better capture market conditions or to reflect the RCA's requirement of the preparation of bi-annual IRP plans? Or, on even a more detailed level, are there changes in the actual RFP solicitation and bid process that need to be strengthened? The Commission solicits views on these and any other issues that might surround the Order 6746 procurement process.

5. Finally, the Commission also solicits views on the "confidentiality" terms agreed to in the Settlement approved in Order 6746.¹³ Those terms, when applied in the RFP process conducted in 2005-06, drew criticism from members of the public, the media, and some legislators. The Commission seeks the views of DP&L, potential wholesale suppliers, and members of the public on whether a different balance point can be struck between a bidding process transparent to the public and the bidders' expressed concerns about the public disclosure of confidential business and bid-strategy information. Or put another way, can one open-up the RFP procurement process without "scaring off" bidders and thereby creating a less competitive bid process likely to result in higher supply price quotes?¹⁴

¹³Order No. 6746, Settlement, Part I at pp. 20-21.

¹⁴The Commission specifically seeks views on whether this State's Freedom of Information Act, 29 Del. C. ch. 100, mandates changes to the

6. In this initial Order, the Commission does not dictate a specific process to consider changes to the Order No. 6746 RFP procurement process. Rather, Staff is given flexibility to develop a process that is efficient but fair. The Commission would anticipate that Staff would initially convene one or more workshops or other similar meetings (all open to the public). There, Staff and the parties can work to not only identify possible changes but to also develop a list of "consensus" changes and narrow the issues related to any "contested" changes. At the same time, the Commission will appoint a Hearing Examiner to be available to decide any material procedural difficulties that might arise during such preliminary phase. If, after such collaborative attempts, disputes still remain and are ones that must, or should, be resolved by adversarial presentations, the designated Hearing Examiner can then conduct the necessary or appropriate proceedings and hearings on the disputed questions and thereafter provide a Report with proposed findings and recommendations. In the end, the Commission anticipates that it will receive at least one, but maybe two Reports. One will be from Staff; it will detail any "consensus changes" to be made to the present Order 6746 RFP process. The other will be from the Hearing Examiner. It will contain his findings and recommendations about the contested changes. Both Reports should be submitted by September 15, 2006.

disclosure of information obtained by the Commission related to the RFP procurement process.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, this docket is re-invigorated to explore and determine what changes, if any, should be made to the "Request for Proposal" procurement process previously accepted by the Commission in PSC Order No. 6746 (Oct. 11, 2005). As described in more detail in the body of this Order, the type of changes that should be investigated and considered include: (a) those that may be necessitated by the statutory changes made by the "Electric Utility Retail Customer Supply Act of 2006" (75 Del. Laws ch. 242 (2006)); (b) those that might improve the procurement process, either in its efficiency or its benefits for Standard Offer Service customers; or (c) those that would make the procurement process more transparent.

2. That, to initiate this investigation of potential changes to the procurement process adopted in PSC Order No. 6746 (Oct. 11, 2005), Staff shall conduct one or more workshops (open to the public) to develop a listing of potential changes to the previously adopted RFP procurement process. After developing such list of potential changes, Staff shall, in workshops or other informal consultations, determine if there exists consensus on any of such proposed changes, or, if not, whether the issues surrounding contested changes can be narrowed. If disputes as to certain proposed changes persist, those disputes should be presented to the Hearing Examiner for adversarial proceedings culminating in a Report with the Hearing Examiner's proposed findings and recommendations.

3. That William F. O'Brien is, pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, designated as the Hearing Examiner in this matter. Senior Hearing Examiner O'Brien shall superintend the process described in Ordering paragraph 2 and the body of this Order. Senior Hearing Examiner O'Brien is specifically designated the authority to decide petitions to intervene in this matter. If, in the course of the proceedings, disputes on substantive issues arise that require adversarial presentation and resolution, Senior Hearing Examiner O'Brien shall conduct such proceedings (including hearings) as may be necessary, or appropriate, to construct a full record on the disputed issues. Thereafter, Senior Hearing Examiner O'Brien shall submit a Report to the Commission with his proposed findings and conclusions along with a recommended decision on each of the disputed substantive issues. In performing these duties, Senior Hearing Examiner O'Brien is delegated the authority, under 26 Del. C. § 102A, to determine the content and manner of any public notice necessary or appropriate.

4. That Staff shall endeavor to file with the Commission a Report on all consensus changes on or before September 15, 2006. Senior Hearing Examiner O'Brien shall endeavor to file with the Commission a Report on all disputed issues and changes on or before September 15, 2006.

5. That, pursuant to 26 Del. C. § 102A, Delmarva Power & Light Company shall cause the public notice attached hereto as Exhibit "A" to be published, in two-column format, outlined in black, in The News Journal newspaper on Monday, June 26, 2006. Proof of such publication shall be filed with the Commission on or before July 12, 2006. In

addition, Delmarva Power & Light Company shall, on or before June 30, 2006, cause a copy of such notice to be sent by United States mail, to each entity that submitted a bid to provide Standard Offer Service wholesale supply load in the procurement process conducted by Delmarva Power & Light Company in December 2005 and January 2006. The Secretary shall send a copy of this Order to:

- (a) the Division of the Public Advocate;
- (b) the Chair of the Energy Committee of the House of Representatives; and
- (d) the Chair of the Energy and Transportation Committee of the State Senate.

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae_____
Chair

/s/ Joann T. Conaway_____
Commissioner

/s/ Dallas Winslow_____
Commissioner

/s/ Jaymes B. Lester_____
Commissioner

ATTEST: /s/ Jeffrey J. Clark_____
Commissioner

/s/ Karen J. Nickerson_____
Secretary

E X H I B I T "A"

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE PROVISION OF)	
STANDARD OFFER SUPPLY TO RETAIL)	
CONSUMERS IN THE SERVICE TERRITORY)	PSC DOCKET NO. 04-391
OF DELMARVA POWER & LIGHT COMPANY)	
AFTER MAY 1, 2006)	
(OPENED OCTOBER 19, 2004))	

**PUBLIC NOTICE OF A PROCEEDING TO CONSIDER
CHANGES TO PROCEDURES GOVERNING
PROCUREMENT OF STANDARD OFFER SERVICE BY
DELMARVA POWER & LIGHT COMPANY**

In PSC Order No. 6746 (Oct. 11, 2005), the Delaware Public Service Commission ("the Commission") adopted a settlement document that set forth a Request for Proposal ("RFP") competitive-bid process that Delmarva Power & Light Company ("DP&L") would use to procure wholesale supply for its retail fixed-price Standard Offer Services within its Delaware service territory. DP&L followed such procedures in DP&L's procurement process of wholesale supply conducted in December, 2005 and January, 2006.

By PSC Order No. 6943 (June 20, 2006), the Commission decided to initiate a process to revisit the RFP procedures to determine if any changes to such procedures are necessary, or appropriate, in light of:

- (1) the enactment of the "Electric Utility Retail Customer Supply Act of 2006," 75 Del. Laws ch. 242 (Apr. 6, 2006);
- (2) the experience gained from the earlier use of such bid process in this State; and
- (3) the previous criticisms of the lack of transparency in such process.

If you wish to participate as a party in this proceeding, and you have not previously intervened in this docket, you must file a petition to intervene under Rule 21 of the Commission's Rules of Practice and Procedure. If you are already a party to this docket, you must file a letter indicating your desire to continue to participate in this review proceeding. Such petitions and letters of continued participation must be filed with the Commission on or before July 12, 2006. Petitions to intervene, letters of continued participation, and comments should be filed at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904
Attn: PSC Dckt. No. 04-391

After the close of the above period, the Commission Staff will conduct workshops to solicit the parties' views on possible changes to the RFP procurement process. You should review Order No. 6746 to learn the contemplated course of proceedings in this matter. Such Order is available at the Commission's website at www.state.de.us/delpsc.

Questions or inquiries concerning this proceeding should be addressed to janis.dillard@state.de.us.